

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture and Water Resources

Farm Household Support Act 2014

Farm Household Support (Forced Disposal of Livestock) Minister's Rules 2019

Legislative Authority

The *Farm Household Support Act 2014* (the FHS Act) provides the mechanism to implement the Farm Household Allowance (FHA), an income support payment for farmers and farmers' partners, who are experiencing financial hardship.

Subsection 106(1) of the FHS Act provides that the Minister may make Minister's rules by legislative instrument prescribing matters required or permitted by the FHS Act to be prescribed by the Minister's rules.

Purpose

The purpose of the *Farm Household Support (Forced Disposal of Livestock) Minister's Rules 2019* (the Rules) is to prescribe modifications to the *Social Security Act 1991* (Social Security Act) in order to exclude amounts from being assessed as income for the purposes of FHA, if certain conditions are met. These conditions include if the income is derived from a forced disposal of livestock and the income is deposited, or is intended to be deposited within 42 days, into a farm management deposit account. It is the amount that the person either deposits or intends to deposit that is exempted under these Rules.

Background

The FHA program commenced on 1 July 2014. It aims to improve the situation of farmers and their partners by providing financial assistance to those who need it. The financial assistance consists of income support, ancillary allowances such as Telephone Allowance, Pharmaceutical Allowance, Rent Assistance, and Remote Area Allowance (as appropriate to the person's circumstances), funding to engage in certain activities (the Activity Supplement), and funding to obtain a farm financial assessment.

In certain circumstances, FHA recipients may be forced to dispose of livestock, or carcasses of livestock. These circumstances may result from:

- an action by the Commonwealth, a State, a Territory, or an authority of the Commonwealth, a State or Territory, that has the effect that land or water cannot be used to support livestock commercially;
- pasture, fodder or water being affected by natural disaster or drought, to the extent that it would be unreasonable to expect the recipient to fully support the disposed livestock;
- a reasonable concern for animal welfare;
- or an Australian law requiring the livestock to be disposed of.

Recipients may receive income in relation to a forced disposal of livestock. The purpose of these Rules is to exempt the income received from being assessed as income for the purposes

of FHA, provided certain conditions are met, including the deposit, or intend to deposit within 42 days of receipt, income into a farm management deposit account owned by the person.

Farm management deposit accounts are risk management tools for primary producers that provide tax concessions. By exempting income received where it is deposited or intended to be deposited into a farm management deposit account, primary producers are encouraged to build up cash reserves which they can draw upon in future years for recovery and restocking once conditions improve.

Impact and Effect

The Rules operate beneficially for those FHA recipients who are forced to dispose of livestock and receive income from that disposal. When recipients establish their initial and ongoing eligibility for FHA, the effect of the Rules is that recipients' income from that forced disposal is now exempt for the purposes of FHA, provided that recipients invest by depositing, or intend to deposit within 42 days of receipt, this income in a farm management deposit account owned by the person.

In the case of a person who intends to make a deposit, in order for the exemption to apply, they must inform the Secretary that a part or all of the proceeds from the forced disposal will be placed in a farm management deposit account owned by that person. The notice to the Secretary does not have to be in writing.

If the person does not make the deposit within 42 days of the income being received, the exemption will no longer apply. The person's rate of FHA will be calculated from the 43rd day taking the income into account. If the person subsequently makes the deposit, they may give notice to the Secretary, and the exemption will apply from the date of the deposit.

The Rules do not operate retrospectively.

Consultation

The Departments of Human Services, the Attorney-General's Department, and the Office of Best Practice Regulation (OBPR ID: 24837) were consulted regarding the Rules.

OBPR advised that a short-form Regulation Impact Statement is required.

Details/ Operation

Details of the Rules are set out in Attachment A.

Other

The Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Farm Household Support (Forced Disposal of Livestock) Minister's Rules 2019*

Section 1 – Name

This section provides that the name of the Rules is the *Farm Household Support (Forced Disposal of Livestock) Minister's Rules 2019*.

Section 2 – Commencement

This section provides for the Rules to commence on 1 July 2019.

Section 3 – Authority

This section provides that the Rules are made under subsection 106(1) of the *Farm Household Support Act 2014* (FHS Act).

Section 4 – Modification of the Social Security Act

This section provides that the Rules modify the operation of the *Social Security Act 1991* (Social Security Act) in relation to the FHS Act.

Section 5 – Application

This section provides that the Rules apply to forced disposals of livestock occurring on or after 1 July 2019.

Schedule 1 – Modifications to the Social Security Act

Item 1 inserts a definition for 'farm management deposit owned' into subsection 8(1) of the Social Security Act. The item provides that 'farm management deposit owned' has the same meaning as in the *Income Tax Assessment Act 1997* (section 393.25 refers).

Item 1 inserts a definition of 'forced disposal of livestock' into subsection 8(1) of the Social Security Act. The items provides that 'forced disposal of livestock' means disposal (including killing) of livestock or all or part of a carcass of livestock by an entity (within the meaning of the ITA Act) that occurs wholly or mainly for one or more of the following reasons:

- (a) an action by the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory that has the effect that land or water cannot be used to support the livestock commercially (for example, compulsory acquisition of an estate in land or other interest under a law of the Commonwealth, a State or a Territory or changing a law governing how land or water may be used), other than an action taken with the entity's free consent;
- (b) drought or natural disaster affected the availability of pasture, fodder or water so that the entity could not reasonably support the livestock;
- (c) reasonable concern for the welfare of the livestock; and

- (d) a requirement by or under a law of the Commonwealth, a State or a Territory to dispose of the livestock.

In order to capture the range of circumstances in which a forced disposal of livestock may occur, the reasons provided above are intentionally broad.

For clarity, ‘disposal’ is intended to cover the killing of livestock as well as the transfer of livestock, or burial.

Item 2 inserts paragraphs and subparagraphs after paragraph 8(8)(c) of the Social Security Act, to add to the list of amounts prescribed in section 8 that are not income for the purposes of the Social Security Act (that is, they are excluded amounts).

Paragraph (ca) is inserted to add an amount that is received by a person because of forced disposal of livestock by the person and which is deposited in a farm management deposit account owned by the person.

Paragraph (cb) is inserted to deal with cases where the deposit has not occurred but is intended to occur. For this paragraph to apply, three conditions must be met.

- i. The first condition, provided for by new subparagraph (cb)(i), is that an amount is received by a person because of forced disposal of livestock by the person.
- ii. The second condition, provided for by new subparagraph (cb)(ii), allows a person a grace period of up to 42 days to make the deposit and qualify for the exemption. In order for the paragraph to apply, the person must inform the Secretary that they have received the amount and of their intention to make the deposit into a farm management deposit account owned by the person.
- iii. The third condition, provided for by new subparagraph (cb)(iii), is that the 42 day period referred to in subparagraph (cb)(ii) has not ended. If the person has not deposited the income within 42 days of receipt, the amount is not excluded.

Paragraph (cc) adds that an amount is excluded if it:

- i. is received by a person; and
- ii. is attributable to a forced disposal of livestock by an entity in which the person holds a membership interest, either directly or through one or more interposed entities; and
- iii. is deposited by the person, by another entity, or on behalf of the person by the trustee of a trust of which the person is a beneficiary, as a farm management deposit owned by the person, is intended by the person to be so deposited or is intended by the trustee to be so deposited by that trustee;

As described above, the terms ‘entity’, ‘entities’ and ‘membership interest’ take their meaning from the *Income Tax Assessment Act 1997*, and include companies, trusts and partnerships.

Paragraph (cd) adds the amount of a forced sale with the criteria of (cc) – including the sale being made by an entity in which the person holds a membership interest – and also includes the intention to deposit clause similarly to (cb)(ii). Like cb(ii), notice of the intention must be given to the Secretary, and the exemption will only apply for the duration of 42 days beginning the day the person received the amount.

Subparagraphs (cc)(ii) and (cd)(ii) recognise that in certain circumstances income received from a forced disposal of livestock may need to pass through several entities before it reaches the relevant person, entity, or trustee of a trust of which the person is a beneficiary.

Item 3 inserts subsection (8AAAA) after subsection 8(8) of the Social Security Act. This subsection provides that an amount for which the conditions in paragraphs 8(8)(cb) or (cd) are met is not income at any time in the 42 day period described in both paragraphs.

That when the conditions in paragraphs 8(8)(cb) or (cd) for the grace period are met, the amount is not included as income. If the grace period expires without the deposit having been made, the amount will be included as income. If a deposit is subsequently made, provisions (ca) or (cc) would be triggered and an exemption applies from the date the deposit is made.

The amount that is exempted by the Rules is the amount the person deposits, or informs the Secretary that they will deposit, and thus may be less than the amount that was received from the qualifying forced disposal of livestock. Any amount that is retained by the farmer would not be exempt by the Rules.

For example, an FHA recipient may receive income from a qualifying forced sale. From the amount, they may pay expenses incurred in generating the income or retain an amount to pay down expenses that are accruing but have not fallen due. The remainder of the income from the forced sale is intended to be deposited, or is deposited, into a farm management deposit owned by the FHA recipient. This amount actually deposited, or which the farmer has informed the Secretary they will deposit, will be exempt income under the Rules. FHA recipients who operate their farm business through a private trust or company are able to access the exemption. The funds from the disposal can pass through the trust or company to an individual who is either the controller or a beneficiary of the private trust, or a director or shareholder of the private company. The farm management deposit can then be made in the person's name.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Farm Household Support (Forced Disposal of Livestock) Minister's Rules 2019

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Farm Household Support (Forced Disposal of Livestock) Minister's Rules 2019* (Rules) prescribe modifications to the *Social Security Act 1991* (Social Security Act) in order to exclude amounts from being assessed as income for the purposes of the Farm Household Allowance (FHA), if certain conditions are met. These conditions include if the income is derived from a forced disposal of livestock and the income is deposited, or is intended to be deposited within 42 days (and that period has not yet elapsed), into a farm management deposit account owned by the person who received the amount. It is the amount that the person either deposits or intends to deposit that is exempted under these Rules.

The Rules commence on 1 July 2019.

The Rules operate beneficially for those FHA applicants and recipients who have been forced to dispose of livestock. Subject to satisfying certain conditions, these recipients now have income received from a qualifying forced disposal exempted when establishing their initial and ongoing eligibility for FHA.

Human rights implications

The Rules engage, or have the potential to engage, human rights and freedoms as recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Specifically, the Rules engage or have the potential to engage the following right within the International Covenant on Economic, Social and Cultural Rights (the ICESCR):

- Article 6(1) – right to work and rights in work
- Article 9 – right to social security
- Article 11(1) – right to an adequate standard of living, including food, water and housing
- Article 12(1) – right to health.

Right to work and rights in work

Article 6 of the ICESCR protects the right to work. Article 6(2) provides that, to achieve the full realisation of this right, States should take steps to include “technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual”.

The Rules ensure that those who have received income from a qualifying forced sale are still able to access the FHA program. One component of the FHA program is access to an Activity Supplement to undertake agreed training and assessment activities as prescribed in their Financial Improvement Agreement (FIA). By increasing access to the FHA program, the Rules encourage recipients to increase their knowledge, skillset and qualifications, or to gain professional advice and assessment. Activities undertaken in accordance with an FHA recipient’s FIA are intended to increase a farmer’s capacity to work on their farm business, or to access alternative work off-farm.

Summary

The Rules engage and promote the right to work and rights in work in Article 6 of the ICESCR.

Right to social security

Article 9 of the ICESCR protects the right to social security. Article 9 provides that States recognise the right of everyone to social security, including social insurance.

The Rules exempt income received by a person from being assessed for the purposes of FHA where it is received from the forced disposal of livestock and then the person has either deposited into a farm management deposit account or indicated they will make the deposit within 42 days of receipt.

If this income is not exempted and is sufficiently high, a recipient could exceed the income threshold for initial or ongoing eligibility for FHA, notwithstanding they remain in financial hardship.

By exempting this income, a recipient’s eligibility for FHA is preserved. As a result, the Rules engage and promote the right to social security in Article 9 of the ICESCR.

Summary

The Rules engage and promote the right to social security in Article 9 of the ICESCR.

Right to an adequate standard of living

Article 11(1) of the ICESCR recognises the right to an adequate standard of living, including food, water and housing. States have an obligation to ensure the availability and accessibility of the resources necessary for the progressive realisation of this right. The ICESCR has stated that the core content of the right to adequate food implies both the availability and (economic and physical) accessibility of food.¹

¹ ICESCR, General Comment No 12 (1999), paragraphs 8 and 13.

The ability of farmers to support livestock may be impacted by circumstances beyond their control. Where a forced sale occurs because of prescribed circumstances, the income from that forced sale will be exempt from assessment for the purposes of Social Security either once invested in a farm management deposit or if a person has indicated they will make the deposit within 42 days of receipt. This will assist to preserve the entitlement to income support and the FHA supplement payment. Income provided under FHA, along with the FHA supplement payment, are discretionary. This means that an FHA recipient is able to access financial support during times of hardship, increasing access to food, water, housing and other preconditions for an adequate standard of living.

FHA recipients are, subject to eligibility criteria, also able to access rent assistance. By providing concessional treatment to certain forced sales, the Rules may also promote the right to an adequate standard of housing.

Summary

The Bill engages and promotes the right to an adequate standard of living, enshrined in Article 11(1) of the ICESCR.

Right to health

Article 12(1) of the ICESCR recognises the right of all individuals to enjoy the highest attainable standard of physical and mental health.

The CESCR has stated that the right to health is not confined to the right to health care.² The CESCR considers that Article 12 more broadly acknowledges that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

By increasing access to FHA for those that have received qualifying income from the forced sale of livestock, the Rules promote access to all measures available under the FHA program. This includes ancillary benefits contained in **Part 2, Subdivisions A and B**.

For example, FHA recipients are granted automatic access to a Health Care Card; and, subject to eligibility criteria, rent assistance and Pharmaceutical Allowance under **Part 2, Division 8, Subdivisions A and B** of the Act.

Health Care Cards provide concessional access for cardholders to pharmaceuticals and medical treatment, while Pharmaceutical Allowance helps with the cost of accessing prescription pharmaceuticals under the Pharmaceutical Benefits Scheme. Operating together, these measures are beneficial to FHA recipients, promoting conditions required to live a healthy life.

Summary

The Rules engage and promote the right to health in Article 12(1) of the ICESCR.

² ICESCR, General Comment No 14 (2000), paragraph 4.

Conclusion

The Rules are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Where the Rules engage with recognised or declared human rights, those rights are promoted.

The Hon. David Littleproud MP
Minister for Agriculture and Water Resources